

in its Fire Department.

2. The Professional Fire Fighters of North Hampton, Local 3211, is the duly certified bargaining agent of firefighters employed by the Town, having been certified as such on September 30, 1991 by the PELRB.
3. Counsel for the Union forwarded written confirmation of the Union's status and its intention to commence negotiations for a first collective bargaining agreement (CBA) on October 7, 1991. A second contact was made in the form of a letter from the Union's counsel to the Town dated November 5, 1991, and received November 6, 1991.
4. The budget submission date for the Town is February 1, annually. One hundred and twenty (120) days prior to that is October 3rd.
5. RSA 273-A:3, II (a) provides "Any party desiring to bargain shall serve written notice of its intention on the other party at least one hundred and twenty days before the budget submission date."
6. The first overture to bargain made by the Union to the Town occurred less than 120 days prior to the Town's budget submission date. The PELRB (and, hence its orders and/or documents) is not a "party desiring to bargain..." as referenced in RSA 273-A:3, II (a).

DECISION AND ORDER

The applicable statutory language found at RSA 273-A:3 II (a) cited in Finding No. 5, above, speaks to "any party desiring to bargain..." The 120 day time limit set forth therein is intended to give the parties ample time to commence and conclude negotiations on items of financial impact, sometimes referred to as "cost items," prior to the budget submission date. This time limit is also part of the larger scheme which initiates the use of mediation (sixty days prior to the budget submission date under RSA 273-A:12) and factfinding (forty-five days prior to budget submission date under RSA 273-A:12) if the unassisted negotiations process has not been successful. All of these pre-budget submission dates are intended to permit the parties to conclude the negotiations process so that "cost items" or cost impact might be presented to the voters in the normal course of the annual meeting of the legislative body of the public employer without the need for petitioning for and justifying a special meeting. Thus, we conclude that, if the requisite notice is not given under RSA 273-A:3 II (a), the obligation to bargain cost items does not attach for the fiscal year to be voted on at the meeting scheduled to

consider the budget for which the submission date is less than 120 days after the union's overture or notice of intent to bargain. Of course, this is not intended to preclude the parties bargaining voluntarily on wages or cost items if the 120 day notice period has not been met. Here, the employer has chosen not to waive the notice requirement. On the other hand, the Union's notice sent to the Town on or about October 7, 1991 is sufficient to compel bargaining on monetary items for any contract that might become effective on or after the February 1, 1993 budget submission date. This is consistent with our decision in Town of Alton v. AFSCME, Council 68, (Decision No. 82-26, May 6, 1982).

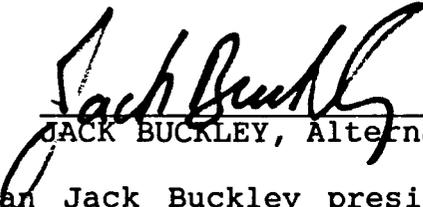
Notwithstanding the foregoing, there is an on-going obligation on the part of the parties to negotiate non-cost items upon demand for those negotiations made by the Union. Since such negotiations have no cost impact and would not have to be calculated into figures presented on or before the budget submission date, the parties have the responsibility and obligation to address non-cost items once the certified bargaining agent has requested bargaining. RSA 273-A:3. Moreover, it has become more and more apparent that the current economic environment has encouraged some parties to bargain changes in wages and benefits within current or existing financial authority. Such negotiations may occur without the requisite 120 day notice.

Finally, addressing the issue of sufficiency of the union's notice to the Town, we do not agree that our Order on September 30, 1991, was adequate to put the employer on notice of the union's intent to bargain. The statute requires that "any party desiring to bargain shall serve written notice..." The PELRB is not a "party desiring to bargain;" therefore, its order is not the requisite "written notice" referenced in RSA 273-A:3 II (a). Accordingly:

1. The unfair labor practice is DISMISSED.
2. The parties are directed to comply with the obligation to bargain as set forth in RSA 273-A:3 and as further explained herein relative to subjects of bargaining for which the 120 day notice is not required.

So ordered.

Signed this 9th day of April, 1992.



JACK BUCKLEY, Alternate Chairman

By unanimous vote. Chairman Jack Buckley presiding. Members Seymour Osman and Arthur Blanchette present and voting.